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HOUSE BILL 313

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO CONSUMER CREDIT COUNSELING; ENACTING THE UNIFORM
DEBT-MANAGEMENT SERVICES ACT; REPEALING AND ENACTING SECTIONS
OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--This act may be cited as the
"Uniform Debt-Management Services Act".

SECTION 2. DEFINITIONS.--As used as in the Uniform
Debt-Management Services Act:

A. "administrator" means the director of the
financial institutions division of the regulation and licensing
department or the director's designee;

B. "affiliate" means:

(1) with respect to an individual:

(a) the spouse of the individual;

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1 (b) a sibling of the individual or the
2 spouse of a sibling;

3 (c) an individual or the spouse of an
4 individual who is a lineal ancestor or lineal descendant of the
5 individual or the individual's spouse;

6 (d) an aunt, uncle, great aunt, great
7 uncle, first cousin, niece, nephew, grandniece or grandnephew,
8 whether related by the whole or the half blood or adoption, or
9 the spouse of any of them; or

10 (e) any other individual occupying the
11 residence of the individual; and

12 (2) with respect to an entity:

13 (a) a person that directly or indirectly
14 controls, is controlled by or is under common control with the
15 entity;

16 (b) an officer of or an individual
17 performing similar functions with respect to the entity;

18 (c) a director of or an individual
19 performing similar functions with respect to the entity;

20 (d) subject to adjustment of the dollar
21 amount pursuant to Subsection E of Section 32 of the Uniform
22 Debt-Management Services Act, a person that receives or has
23 received more than twenty-five thousand dollars (\$25,000) from
24 the entity in either the current year or the preceding year or
25 a person that owns more than ten percent of, or an individual

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1 who is employed by or is a director of, a person that receives
2 or has received more than twenty-five thousand dollars
3 (\$25,000) from the entity in either the current year or the
4 preceding year;

5 (e) an officer or director of, or an
6 individual performing similar functions with respect to, a
7 person described in Subparagraph (a) of this paragraph;

8 (f) the spouse of, or an individual
9 occupying the residence of, an individual described in
10 Subparagraphs (a) through (e) of this paragraph; or

11 (g) an individual who has the
12 relationship specified in Subparagraph (d) of Paragraph (1) of
13 this subsection to an individual or the spouse of an individual
14 described in Subparagraphs (a) through (e) of this paragraph;

15 C. "agreement" means an agreement between a
16 provider and an individual for the performance of
17 debt-management services;

18 D. "bank" means a financial institution, including
19 a commercial bank, savings bank, savings and loan association,
20 credit union and trust company, engaged in the business of
21 banking, chartered pursuant to federal or state law and
22 regulated by a federal or state banking regulatory authority;

23 E. "business address" means the physical location
24 of a business, including the name and number of a street;

25 F. "certified counselor" means an individual

1 certified by a training program or certifying organization,
2 approved by the administrator, that authenticates the
3 competence of individuals providing education and assistance to
4 other individuals in connection with debt-management services
5 in which an agreement contemplates that creditors will reduce
6 finance charges or fees for late payment, default or
7 delinquency;

8 G. "certified debt specialist" means an individual
9 certified by a training program or certifying organization,
10 approved by the administrator, that authenticates the
11 competence of individuals providing education and assistance to
12 other individuals in connection with debt-management services
13 in which an agreement contemplates that creditors will settle
14 debts for less than the full principal amount of debt owed;

15 H. "concessions" means assent to repayment of a
16 debt on terms more favorable to an individual than the terms of
17 the contract between the individual and a creditor;

18 I. "day" means a calendar day;

19 J. "debt-management services" means services as an
20 intermediary between an individual and one or more creditors of
21 the individual for the purpose of obtaining concessions, but
22 does not include:

23 (1) legal services provided in an
24 attorney-client relationship by an attorney licensed or
25 otherwise authorized to practice law in New Mexico;

.184442.5

1 (2) accounting services provided in an
2 accountant-client relationship by a certified public accountant
3 licensed to provide accounting services in New Mexico; or

4 (3) financial-planning services provided in a
5 financial planner-client relationship by a member of a
6 financial-planning profession whose members the administrator,
7 by rule, determines are:

- 8 (a) licensed by New Mexico;
- 9 (b) subject to a disciplinary mechanism;
- 10 (c) subject to a code of professional
11 responsibility; and

- 12 (d) subject to a continuing education
13 requirement;

14 K. "entity" means a person other than an
15 individual;

16 L. "good faith" means honesty in fact and the
17 observance of reasonable standards of fair dealing;

18 M. "lead generator" means a person that supplies a
19 provider with the names of potential customers, directs
20 communications of an individual to a provider or otherwise
21 channels customers to a provider;

22 N. "person" means an individual, corporation,
23 business trust, estate, trust, partnership, limited liability
24 company, association, joint venture or any other legal or
25 commercial entity. "Person" does not include a public

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1 corporation, government or governmental subdivision, agency or
2 instrumentality;

3 O. "plan" means a program or strategy in which a
4 provider furnishes debt-management services to an individual
5 and that includes a schedule of payments to be made by or on
6 behalf of the individual and used to pay debts owed by the
7 individual. Every "plan" is a part of an "agreement", but not
8 every "agreement" meets the additional requirements of a "plan"
9 as defined in this subsection;

10 P. "principal amount of the debt" means the amount
11 of a debt at the time of an agreement;

12 Q. "provider" means a person that provides, offers
13 to provide or agrees to provide debt-management services
14 directly or through others;

15 R. "record" means information that is inscribed on
16 a tangible medium or that is stored in an electronic or other
17 medium and is retrievable in perceivable form;

18 S. "settlement fee" means a charge imposed on or
19 paid by an individual in connection with a creditor's assent to
20 accept in full satisfaction of a debt an amount less than the
21 principal amount of the debt;

22 T. "sign" means, with present intent to
23 authenticate or adopt a record:

24 (1) to execute or adopt a tangible symbol; or

25 (2) to attach to or logically associate with

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1 the record an electronic sound, symbol or process;

2 U. "state" means a state of the United States, the
3 District of Columbia, Puerto Rico, the United States Virgin
4 Islands or any territory or insular possession subject to the
5 jurisdiction of the United States; and

6 V. "trust account" means an account to be used for
7 payment of a provider's fees or for payment to creditors
8 pursuant to a plan, or both.

9 SECTION 3. EXEMPT AGREEMENTS AND PERSONS.--

10 A. The Uniform Debt-Management Services Act does
11 not apply to an agreement with an individual if a provider does
12 not know and has no reason to know that the individual resides
13 in New Mexico at the time of the agreement.

14 B. The Uniform Debt-Management Services Act does
15 not apply to a provider to the extent that the provider:

16 (1) provides or agrees to provide
17 debt-management, educational or counseling services to an
18 individual if the provider does not know and has no reason to
19 know that the individual resides in New Mexico at the time the
20 provider agrees to provide the services; or

21 (2) receives no compensation for debt-
22 management services from or on behalf of the individuals to
23 whom it provides the services or from their creditors.

24 C. The Uniform Debt-Management Services Act does
25 not apply to the following persons or their employees when the

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1 person or the employee is engaged in the regular course of the
2 person's business or profession:

3 (1) a judicial officer, a person acting
4 pursuant to an order of a court or an administrative agency or
5 an assignee for the benefit of creditors;

6 (2) a bank;

7 (3) an affiliate of a bank if the affiliate is
8 regulated by a federal or state banking regulatory authority;
9 or

10 (4) a title insurer, escrow company or other
11 person that provides bill-paying services if the provision of
12 debt-management services is incidental to the bill-paying
13 services.

14 SECTION 4. REGISTRATION REQUIRED.--

15 A. Except as otherwise provided in Subsection B of
16 this section, a provider shall not provide debt-management
17 services to an individual whom it knows or reasonably should
18 know resides in New Mexico at the time it agrees to provide the
19 services, unless the provider is registered pursuant to the
20 Uniform Debt-Management Services Act.

21 B. If a provider is registered pursuant to the
22 Uniform Debt-Management Services Act, Subsection A of this
23 section does not apply to an employee or agent of the provider.

24 C. The administrator shall maintain and publicize a
25 list of the names of all registered providers.

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1 SECTION 5. APPLICATION FOR REGISTRATION--FORM, FEE AND
2 ACCOMPANYING DOCUMENTS.--

3 A. An application for registration as a provider
4 shall be in a form prescribed by the administrator.

5 B. Subject to adjustment of dollar amounts pursuant
6 to Subsection E of Section 32 of the Uniform Debt-Management
7 Services Act, an application for registration as a provider
8 shall be accompanied by:

9 (1) a five-hundred-dollar (\$500) application
10 fee;

11 (2) the bond required by Section 13 of the
12 Uniform Debt-Management Services Act;

13 (3) identification of all trust accounts and
14 an irrevocable consent authorizing the administrator or the
15 attorney general to review and examine the trust accounts;

16 (4) evidence of insurance in the amount of two
17 hundred fifty thousand dollars (\$250,000):

18 (a) against the risks of dishonesty,
19 fraud, theft and other misconduct on the part of the applicant
20 or a director, employee or agent of the applicant;

21 (b) issued by an insurance company
22 authorized to do business in New Mexico and rated at least A or
23 equivalent by a nationally recognized rating organization
24 approved by the administrator;

25 (c) with a deductible not exceeding five

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1 thousand dollars (\$5,000);

2 (d) payable for the benefit of the
3 applicant, New Mexico and the individuals who are residents of
4 New Mexico, as their interests may appear; and

5 (e) not subject to cancellation by the
6 applicant or the insurer until sixty days after written notice
7 has been given to the administrator and the attorney general;

8 (5) proof of compliance with the applicable
9 law of New Mexico governing either the formation in New Mexico
10 of the applicant or the qualification to do business in New
11 Mexico by the applicant, together with the name and business
12 address of the applicant's registered agent in New Mexico for
13 the service of process; and

14 (6) if the applicant is organized as a
15 not-for-profit entity or is exempt from taxation pursuant to
16 the Internal Revenue Code of 1986, 26 U.S.C. Section 501, as
17 amended, evidence of not-for-profit status or tax-exempt status
18 or both, if applicable.

19 **SECTION 6. APPLICATION FOR REGISTRATION--REQUIRED**
20 **INFORMATION.--**An application for registration shall be signed,
21 upon oath or affirmation, and include:

22 A. the applicant's name, principal business address
23 and telephone number and all other business addresses in New
24 Mexico, electronic-mail addresses and internet web site
25 addresses;

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1 B. all names under which the applicant conducts
2 business;

3 C. the address of each location in New Mexico at
4 which the applicant will provide debt-management services or a
5 statement that the applicant will have no such location;

6 D. the name and home address of each officer and
7 director of the applicant and each person that owns at least
8 ten percent of the applicant;

9 E. identification of every jurisdiction in which,
10 during the five years immediately preceding the application:

11 (1) the applicant or any of its officers or
12 directors has been licensed or registered to provide debt-
13 management services; or

14 (2) individuals have resided when they
15 received debt-management services from the applicant;

16 F. a statement describing, to the extent it is
17 known or should be known by the applicant, any material civil
18 or criminal judgment or litigation and any material
19 administrative or enforcement action by a governmental agency
20 in any jurisdiction against the applicant, any of its officers,
21 directors, owners or agents, or any person who is authorized to
22 have access to a trust account;

23 G. the applicant's financial statements, audited by
24 an accountant licensed to conduct audits, for each of the two
25 years immediately preceding the application or, if it has not

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1 been in operation for the two years preceding the application,
2 for the period of its existence;

3 H. evidence of accreditation by an independent
4 accrediting organization approved by the administrator;

5 I. evidence that, within twelve months after
6 initial employment, each of the applicant's counselors becomes
7 certified as a certified counselor or certified debt
8 specialist;

9 J. a description of the three most commonly used
10 educational programs that the applicant provides or intends to
11 provide to individuals who reside in New Mexico and a copy of
12 any materials used or to be used in those programs;

13 K. a description of the applicant's financial
14 analysis and initial budget plan, including any form or
15 electronic model, used to evaluate the financial condition of
16 individuals;

17 L. a copy of each form of agreement that the
18 applicant will use with individuals who reside in New Mexico;

19 M. the schedule of fees and charges that the
20 applicant will use with individuals who reside in New Mexico;

21 N. at the applicant's expense, the results of a
22 criminal records check, including fingerprints, conducted
23 within the immediately preceding twelve months, covering every
24 officer of the applicant and every employee or agent of the
25 applicant who is authorized to have access to a trust account;

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1 O. the names and addresses of all employers of each
2 director during the ten years immediately preceding the
3 application;

4 P. a description of any ownership interest of at
5 least ten percent by a director, owner or employee of the
6 applicant in:

7 (1) any affiliate of the applicant; or

8 (2) any entity that provides products or
9 services to the applicant or any individual relating to the
10 applicant's debt-management services;

11 Q. a statement of the amount of compensation of the
12 applicant's five most highly compensated employees for each of
13 the three years immediately preceding the application or, if it
14 has not been in operation for the three years preceding the
15 application, for the period of its existence;

16 R. the identity of each director who is an
17 affiliate of the applicant;

18 S. a statement listing all names under which the
19 applicant or any affiliate of the applicant provides or has
20 provided debt-management services within the preceding five
21 calendar years; and

22 T. any other information that the administrator
23 reasonably requires to perform the administrator's duties
24 pursuant to Section 9 of the Uniform Debt-Management Services
25 Act.

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1 **SECTION 7. APPLICATION FOR REGISTRATION--OBLIGATION TO**
2 UPDATE INFORMATION.--An applicant or registered provider shall
3 notify the administrator within ten days after a change in the
4 information specified in Paragraph (4) or (6) of Subsection B
5 of Section 5 of the Uniform Debt-Management Services Act or
6 Subsection A, C, F, L or M of Section 6 of that act.

7 **SECTION 8. APPLICATION FOR REGISTRATION--PUBLIC**
8 INFORMATION.--Except for the information required by
9 Subsections G, N and Q of Section 6 of the Uniform Debt-
10 Management Services Act and the addresses required by
11 Subsection D of that section, the administrator shall make the
12 information in an application for registration as a provider
13 available to the public.

14 **SECTION 9. CERTIFICATE OF REGISTRATION--ISSUANCE OR**
15 DENIAL.--

16 A. Except as otherwise provided in Subsections C
17 and D of this section, the administrator shall issue a
18 certificate of registration as a provider to a person that
19 complies with Sections 5 and 6 of the Uniform Debt-Management
20 Services Act.

21 B. If an applicant has otherwise complied with
22 Sections 5 and 6 of the Uniform Debt-Management Services Act,
23 including a timely effort to obtain the information required by
24 Subsection N of Section 6 of that act but the information has
25 not been received, the administrator may issue a temporary

1 certificate of registration. The temporary certificate shall
2 expire no later than one hundred eighty days after issuance.

3 C. The administrator may deny registration if:

4 (1) the application contains information that
5 is materially erroneous or incomplete;

6 (2) an officer, director or owner of the
7 applicant has been convicted of a crime or suffered a civil
8 judgment involving dishonesty or the violation of state or
9 federal securities laws;

10 (3) the applicant or any of its officers,
11 directors or owners has defaulted in the payment of money
12 collected for others;

13 (4) the application is not accompanied by the
14 fee established by the administrator; or

15 (5) the administrator finds that the financial
16 responsibility, experience, character or general fitness of the
17 applicant or its owners, directors, employees or agents does
18 not warrant belief that the business will be operated in
19 compliance with the Uniform Debt-Management Services Act.

20 D. The administrator shall deny registration if,
21 with respect to an applicant that is organized as a
22 not-for-profit entity or has obtained tax-exempt status
23 pursuant to the Internal Revenue Code of 1986, 26 U.S.C.
24 Section 501, as amended, the applicant's board of directors is
25 not independent of the applicant's employees and agents.

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1 E. Subject to adjustment of the dollar amount
2 pursuant to Subsection E of Section 32 of the Uniform
3 Debt-Management Services Act, a board of directors is not
4 independent for purposes of Subsection D of this section if
5 more than one-fourth of its members:

- 6 (1) are affiliates of the applicant; or
- 7 (2) after the date ten years before first
8 becoming a director of the applicant, were employed by or were
9 directors of a person that received from the applicant more
10 than twenty-five thousand dollars (\$25,000) in either the
11 current year or the preceding year.

12 **SECTION 10. CERTIFICATE OF REGISTRATION--TIMING.--**

13 A. The administrator shall approve or deny an
14 initial registration as a provider within one hundred twenty
15 days after an application is filed. In connection with a
16 request pursuant to Subsection S of Section 6 of the Uniform
17 Debt-Management Services Act for additional information, the
18 administrator may extend the one-hundred-twenty-day period for
19 not more than sixty days. Within seven days after denying an
20 application, the administrator, in a record, shall inform the
21 applicant of the reasons for the denial.

22 B. If the administrator denies an application for
23 registration as a provider or does not act on an application
24 within the time prescribed in Subsection A of this section, the
25 applicant may appeal and request a hearing.

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1 C. Subject to the provisions of Subsection D of
2 Section 11 and Section 34 of the Uniform Debt-Management
3 Services Act, a registration as a provider is valid for one
4 year.

5 **SECTION 11. RENEWAL OF REGISTRATION.--**

6 A. A provider shall obtain a renewal of its
7 registration annually.

8 B. An application for renewal of registration as a
9 provider shall be in a form prescribed by the administrator,
10 signed upon oath or affirmation, and shall:

11 (1) be filed no fewer than sixty and no more
12 than ninety days before the registration expires;

13 (2) be accompanied by a two-hundred-dollar
14 (\$200) renewal fee and the bond required by Section 13 of the
15 Uniform Debt-Management Services Act;

16 (3) contain the matter required for initial
17 registration as a provider by Subsections H and I of Section 6
18 of the Uniform Debt-Management Services Act and a financial
19 statement, audited by an accountant licensed to conduct audits,
20 for the applicant's fiscal year immediately preceding the
21 application;

22 (4) disclose any changes in the information
23 contained in the applicant's application for registration or
24 its immediately previous application for renewal, as
25 applicable. If an application is otherwise complete and the

1 applicant has made a timely effort to obtain the information
2 required by Subsection N of Section 6 of the Uniform Debt-
3 Management Services Act but the information has not been
4 received, the administrator may issue a temporary renewal of
5 registration. The temporary renewal shall expire no later than
6 ninety days after issuance;

7 (5) supply evidence of insurance in an amount
8 equal to the greater of two hundred fifty thousand dollars
9 (\$250,000) or the highest daily balance in each trust account
10 during the six-month period immediately preceding the
11 application:

12 (a) against risks of dishonesty, fraud,
13 theft and other misconduct on the part of the applicant or a
14 director, employee or agent of the applicant;

15 (b) issued by an insurance company
16 authorized to do business in New Mexico and rated at least A or
17 equivalent by a nationally recognized rating organization
18 approved by the administrator;

19 (c) with a deductible not exceeding five
20 thousand dollars (\$5,000);

21 (d) payable for the benefit of the
22 applicant, New Mexico and individuals who are residents of New
23 Mexico, as their interests may appear; and

24 (e) not subject to cancellation by the
25 applicant or the insurer until sixty days after written notice

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1 has been given to the administrator;

2 (6) disclose the total amount of money
3 deposited in trust accounts or received by the applicant
4 pursuant to plans during the preceding twelve months from or on
5 behalf of individuals who reside in New Mexico and the total
6 amount of money distributed to creditors of those individuals
7 during that period;

8 (7) disclose, to the best of the applicant's
9 knowledge, the gross amount of money accumulated during the
10 preceding twelve months pursuant to plans by or on behalf of
11 individuals who reside in New Mexico and with whom the
12 applicant has agreements; and

13 (8) provide any other information that the
14 administrator reasonably requires to perform the
15 administrator's duties pursuant to this section.

16 C. Except for the information required by
17 Subsections G, N and Q of Section 6 of the Uniform Debt-
18 Management Services Act and the addresses required by
19 Subsection D of that section, the administrator shall make the
20 information in an application for renewal of registration as a
21 provider available to the public.

22 D. If a registered provider files a timely and
23 complete application for renewal of registration, the
24 registration remains effective until the administrator, in a
25 record, notifies the applicant of a denial and states the

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1 reasons for the denial.

2 E. If the administrator denies an application for
3 renewal of registration as a provider, the applicant within
4 thirty days after receiving notice of the denial may appeal and
5 request a hearing. Subject to Section 34 of the Uniform
6 Debt-Management Services Act, while the appeal is pending, the
7 applicant shall continue to provide debt-management services to
8 individuals with whom it has agreements, but to no others whom
9 it knows or has reason to know are residents of New Mexico. If
10 the denial is affirmed, subject to the administrator's order
11 and Section 34 of the Uniform Debt-Management Services Act, the
12 applicant shall continue to provide debt-management services to
13 individuals with whom it has agreements until, with the
14 approval of the administrator, it transfers the agreements to
15 another registered provider or returns to the individuals all
16 unexpended money that is under the applicant's control.

17 **SECTION 12. REGISTRATION IN ANOTHER STATE.--**If a
18 provider or an affiliate of a provider holds a license or
19 certificate of registration in another state authorizing it to
20 provide debt-management services, the provider shall submit a
21 copy of that license or certificate to the administrator
22 together with the application in the form prescribed by
23 Subsection A of Section 5, Section 6 or Subsection B of Section
24 11 of the Uniform Debt-Management Services Act. A provider
25 providing debt-management services to residents of New Mexico

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1 shall be registered to do so pursuant to the Uniform Debt-
2 Management Services Act even if it holds a license or
3 certificate of registration authorizing it to provide debt-
4 management services in another state. The provider shall
5 notify the administrator within ten days of the commencement
6 and outcome of any proceedings in another state to revoke,
7 suspend or deny the renewal of a license or a certificate of
8 registration of the provider or an affiliate of the provider in
9 that state.

10 SECTION 13. BOND REQUIRED.--

11 A. Except as otherwise provided in Section 14 of
12 the Uniform Debt-Management Services Act, a provider that is
13 required to be registered pursuant to the provisions of that
14 act shall file a surety bond with the administrator, which
15 shall:

16 (1) be in effect during the period of
17 registration and for two years after the provider ceases
18 providing debt-management services to individuals in New
19 Mexico; and

20 (2) run to New Mexico for the benefit of New
21 Mexico and of individuals who reside in New Mexico when they
22 agree to receive debt-management services from the provider, as
23 their interests may appear.

24 B. Subject to adjustment of the dollar amount
25 pursuant to Subsection E of Section 32 of the Uniform Debt-

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1 Management Services Act, a surety bond filed pursuant to
2 Subsection A of this section shall:

3 (1) be in the amount of fifty thousand dollars
4 (\$50,000) or other larger or smaller amount that the
5 administrator determines is warranted by the financial
6 condition and business experience of the provider, the history
7 of the provider in performing debt-management services, the
8 risk to individuals and any other factor the administrator
9 considers appropriate;

10 (2) be issued by a bonding, surety or
11 insurance company authorized to do business in New Mexico and
12 rated at least A by a nationally recognized rating
13 organization; and

14 (3) have payment conditioned upon
15 noncompliance of the provider or its agent with the Uniform
16 Debt-Management Services Act.

17 C. If the principal amount of a surety bond is
18 reduced by payment of a claim or a judgment, the provider shall
19 immediately notify the administrator and within thirty days
20 after notice by the administrator file a new or additional
21 surety bond in an amount set by the administrator. The amount
22 of the new or additional bond shall be at least the amount of
23 the bond immediately before payment of the claim or judgment.
24 If for any reason a surety terminates a bond, the provider
25 shall immediately file a new surety bond in the amount of fifty

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1 thousand dollars (\$50,000) or other amount determined pursuant
2 to Subsection B of this section.

3 D. The administrator or an individual may obtain
4 satisfaction out of the surety bond procured pursuant to this
5 section if:

6 (1) the administrator assesses expenses
7 pursuant to Paragraph (1) of Subsection B of Section 32 of the
8 Uniform Debt-Management Services Act, issues a final order
9 pursuant to Paragraph (2) of Subsection A of Section 33 of that
10 act or recovers a final judgment pursuant to Paragraph (4) or
11 (5) of Subsection A or Subsection D of Section 33 of that act;
12 or

13 (2) an individual recovers a final judgment
14 pursuant to Subsection A or B of Section 35 of the Uniform
15 Debt-Management Services Act or Paragraph (1), (2) or (4) of
16 Subsection C of that section.

17 E. If claims against a surety bond exceed or are
18 reasonably expected to exceed the amount of the bond, the
19 administrator, on the administrator's own initiative or on
20 petition of the surety, the attorney general or another
21 interested person, shall, unless the proceeds are adequate to
22 pay all costs, judgments and claims, distribute the proceeds in
23 the following order:

24 (1) to satisfaction of a final order or
25 judgment pursuant to Paragraph (2), (4) or (5) of Subsection A

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1 of Section 33 of the Uniform Debt-Management Services Act or
2 Subsection D of that section;

3 (2) to final judgments recovered by
4 individuals pursuant to Subsection A or B of Section 35 of the
5 Uniform Debt-Management Services Act or Paragraph (1), (2) or
6 (4) of Subsection C of that section, pro rata;

7 (3) to claims of individuals established to
8 the satisfaction of the administrator, pro rata; and

9 (4) if a final order or judgment is issued
10 pursuant to Subsection A of Section 33 of the Uniform Debt-
11 Management Services Act, to the expenses charged pursuant to
12 Paragraph (1) of Subsection B of Section 32 of that act.

13 SECTION 14. BOND REQUIRED--SUBSTITUTE.--

14 A. Instead of the surety bond required by Section
15 13 of the Uniform Debt-Management Services Act, a provider may
16 deliver to the administrator, in the amount required by
17 Subsection B of that section, and, except as otherwise provided
18 in Subparagraph (a) of Paragraph (2) of this subsection,
19 payable or available to New Mexico and to individuals who
20 reside in New Mexico when they agree to receive debt-management
21 services from the provider, as their interests may appear, if
22 the provider or its agent does not comply with the Uniform
23 Debt-Management Services Act:

- 24 (1) a certificate of insurance:
25 (a) issued by an insurance company

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1 authorized to do business in New Mexico and rated at least A or
2 equivalent by a nationally recognized rating organization
3 approved by the administrator; and

4 (b) with no deductible, or if the
5 provider supplies a bond in the amount of five thousand dollars
6 (\$5,000), a deductible not exceeding five thousand dollars
7 (\$5,000); or

8 (2) with the approval of the administrator:

9 (a) an irrevocable letter of credit,
10 issued or confirmed by a bank through an office located in New
11 Mexico and approved by the administrator, payable upon
12 presentation of a certificate by the administrator stating that
13 the provider or its agent has not complied with the Uniform
14 Debt-Management Services Act; or

15 (b) bonds or other obligations of the
16 United States or guaranteed by the United States or bonds or
17 other obligations of New Mexico or a political subdivision of
18 New Mexico, to be deposited and maintained with a bank approved
19 by the administrator for this purpose.

20 B. If a provider furnishes a substitute pursuant to
21 Subsection A of this section, the provisions of Subsections A,
22 C, D and E of Section 13 of the Uniform Debt-Management
23 Services Act apply to the substitute.

24 **SECTION 15. REQUIREMENT OF GOOD FAITH.--**A provider shall
25 act in good faith in all matters pursuant to the Uniform

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1 Debt-Management Services Act.

2 SECTION 16. CUSTOMER SERVICE.--A provider that provides
3 debt-management services to an individual whom it knows or
4 reasonably should know resides in New Mexico at the time it
5 agrees to provide such services shall maintain a toll-free
6 communication system, staffed at a level that reasonably
7 permits an individual to speak to a certified counselor,
8 certified debt specialist or customer service representative,
9 as appropriate, during ordinary business hours.

10 SECTION 17. PREREQUISITES FOR PROVIDING DEBT-MANAGEMENT
11 SERVICES.--

12 A. Before providing debt-management services, a
13 provider that provides debt-management services to an
14 individual whom it knows or reasonably should know resides in
15 New Mexico at the time it agrees to provide such services shall
16 give the individual an itemized list of goods and services and
17 the charges for each. The list shall be clear and conspicuous,
18 be in a record that the individual may keep, whether or not the
19 individual assents to an agreement, and describe the goods and
20 services the provider offers:

21 (1) free of additional charge if the
22 individual enters into an agreement;

23 (2) for a charge if the individual does not
24 enter into an agreement; and

25 (3) for a charge if the individual enters into

1 an agreement, using the following terminology, as applicable,
2 and format:

3 "Set-up fee:

4

(dollar amount of fee)

5

6 Monthly service fee:

7

(dollar amount of fee or method of determining amount)

8

9 Settlement fee:

10

(dollar amount of fee or method of determining amount)

11

12 Goods and services in addition to those provided in connection
13 with a plan:

14

(item) (dollar amount or method of determining amount)

15

16

(item) (dollar amount or method of determining amount)".

17

18 B. A provider shall not furnish debt-management
19 services unless the provider, through the services of a
20 certified counselor or certified debt specialist:

21

(1) provides the individual with reasonable
22 education about the management of personal finance;

22

23

(2) has prepared a financial analysis; and

24

(3) if the individual is to make regular,

25

periodic payments to a creditor or provider:

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1 (a) has prepared a plan for the
2 individual;

3 (b) has made a determination, based on
4 the provider's analysis of the information provided by the
5 individual and otherwise available to it, that the plan is
6 suitable for the individual and the individual will be able to
7 meet the payment obligations pursuant to the plan; and

8 (c) believes that each creditor of the
9 individual listed as a participating creditor in the plan will
10 accept payment of the individual's debts as provided in the
11 plan.

12 C. Before an individual assents to an agreement to
13 engage in a plan, a provider shall:

14 (1) provide the individual with a copy of the
15 analysis and plan required by Subsection B of this section in a
16 record that identifies the provider and that the individual may
17 keep whether or not the individual assents to the agreement;

18 (2) inform the individual of the availability,
19 at the individual's option, of assistance by a toll-free
20 communication system or in person to discuss the financial
21 analysis and plan required by Subsection B of this section; and

22 (3) with respect to all creditors identified
23 by the individual or otherwise known by the provider to be
24 creditors of the individual, provide the individual with a list
25 of:

.184442.5

1 (a) creditors that the provider expects
2 to participate in the plan and grant concessions;

3 (b) creditors that the provider expects
4 to participate in the plan but not grant concessions;

5 (c) creditors that the provider expects
6 not to participate in the plan; and

7 (d) all other creditors.

8 D. Before an individual assents to an agreement,
9 the provider shall inform the individual, in a record that
10 contains nothing else, that is given separately and that the
11 individual may keep whether or not the individual assents to
12 the agreement:

13 (1) of the name and business address of the
14 provider;

15 (2) that plans are not suitable for all
16 individuals and the individual may ask the provider about other
17 ways, including bankruptcy, to deal with indebtedness;

18 (3) that establishment of a plan may adversely
19 affect the individual's credit rating or credit scores;

20 (4) that nonpayment of debt may lead creditors
21 to increase finance and other charges or undertake collection
22 activity, including litigation;

23 (5) unless it is not true, that the provider
24 may receive compensation from the creditors of the individual;

25 (6) that, unless the individual is insolvent,

1 if a creditor settles for less than the full amount of the
2 debt, the plan may result in the creation of taxable income to
3 the individual, even though the individual does not receive any
4 money;

5 (7) that the provider, who is not otherwise
6 authorized or officially licensed, does not provide accounting
7 or legal advice to individuals;

8 (8) that the use of debt-management services
9 may not stop a creditor from filing or pursuing a lawsuit
10 against an individual;

11 (9) that the use of debt-management services
12 will not stop debt collection activity or wage garnishment; and

13 (10) that some creditors refuse to negotiate
14 with debt-management providers.

15 E. If a provider may receive payments from an
16 individual's creditors and the plan contemplates that the
17 individual's creditors will reduce finance charges or fees for
18 late payment, default or delinquency, the provider may comply
19 with Subsection D of this section by providing the following
20 disclosure, surrounded by black lines:

21 **"IMPORTANT INFORMATION FOR YOU TO CONSIDER**

22 (1) Debt-management plans are not right for
23 all individuals, and you may ask us to
24 provide information about other ways,
25 including bankruptcy, to deal with your

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1 debts.

2 (2) Using a debt-management plan may make it
3 harder for you to obtain credit.

4 (3) We may receive compensation for our
5 services from your creditors.

6 _____
7 *Name and business address of provider".*

8 F. If a provider will not receive payments from an
9 individual's creditors and the plan contemplates that the
10 individual's creditors will reduce finance charges or fees for
11 late payment, default or delinquency, a provider may comply
12 with Subsection D of this section by providing the following
13 disclosure, surrounded by black lines:

14 **"IMPORTANT INFORMATION FOR YOU TO CONSIDER**

15 (1) Debt-management plans are not right for
16 all individuals, and you may ask us to
17 provide information about other ways,
18 including bankruptcy, to deal with your
19 debts.

20 (2) Using a debt-management plan may make it
21 harder for you to obtain credit.

22 _____
23 *Name and business address of provider".*

24 G. If an agreement contemplates that creditors will
25 settle debts for less than the full principal amount of debt

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1 owed, a provider may comply with Subsection D of this section
2 by providing the following disclosure, surrounded by black
3 lines:

4 "IMPORTANT INFORMATION FOR YOU TO CONSIDER

- 5 (1) Our program is not right for all
6 individuals, and you may ask us to
7 provide information about bankruptcy and
8 other ways to deal with your debts.
- 9 (2) Nonpayment of your debts under our
10 program may:
- 11 · hurt your credit rating or credit scores;
 - 12 · lead your creditors to increase finance and
 - 13 other charges; and
 - 14 · lead your creditors to undertake
 - 15 activity, including lawsuits, to collect
 - 16 the debts.
- 17 (3) Reduction of debt under our program may
18 result in taxable income to you, even
19 though you will not actually receive any
20 money.

21 _____
22 *Name and business address of provider".*

23 SECTION 18. COMMUNICATION BY ELECTRONIC OR OTHER

24 MEANS.--

25 A. As used in this section:

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1 (1) "consumer" means an individual who seeks
2 or obtains goods or services that are used primarily for
3 personal, family or household purposes; and

4 (2) "federal act" means the federal Electronic
5 Signatures in Global and National Commerce Act, 15 U.S.C.
6 Section 7001, et seq., as amended.

7 B. A provider may satisfy the requirements of
8 Section 17, 19 or 27 of the Uniform Debt-Management Services
9 Act by means of the internet or other electronic means if the
10 provider obtains a consumer's consent in the manner provided by
11 Section 101(c)(1) of the federal act.

12 C. The disclosures and materials required by
13 Sections 17, 19 and 27 of the Uniform Debt-Management Services
14 Act shall be presented in a form that is capable of being
15 accurately reproduced for later reference.

16 D. With respect to disclosure by means of an
17 internet web site, the disclosure of the information required
18 by Subsection D of Section 17 of the Uniform Debt-Management
19 Services Act shall appear on one or more screens that:

20 (1) contain no other information; and
21 (2) the individual must see before proceeding
22 to assent to formation of an agreement.

23 E. At the time of providing the materials and
24 agreement required by Subsections C and D of Section 17 and
25 Sections 19 and 27 of the Uniform Debt-Management Services Act,

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1 a provider shall inform the individual that upon electronic,
2 telephonic or written request, it will send the individual a
3 written copy of the materials and shall comply with a request
4 as provided in Subsection F of this section.

5 F. If a provider is requested, before the
6 expiration of ninety days after an agreement is completed or
7 terminated, to send a written copy of the materials required by
8 Subsections C and D of Section 17 and Sections 19 and 27 of the
9 Uniform Debt-Management Services Act, the provider shall send
10 the materials at no charge within three business days after the
11 request is received, but the provider need not comply with a
12 request more than once per calendar month or if it reasonably
13 believes the request is made for purposes of harassment. If a
14 request is made more than ninety days after an agreement is
15 completed or terminated, the provider shall send within a
16 reasonable time a written copy of the materials requested.

17 G. A provider that maintains an internet web site
18 shall disclose on the home page of its web site or on a page
19 that is clearly and conspicuously connected to the home page by
20 a link that clearly reveals its contents:

21 (1) its name and all names under which it does
22 business;

23 (2) its principal business address, telephone
24 number and electronic-mail address, if any; and

25 (3) the names of its principal officers.

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1 H. Subject to Subsection I of this section, if a
2 consumer who has consented to electronic communication in the
3 manner provided by Section 101 of the federal act withdraws
4 consent as provided in the federal act, a provider may
5 terminate its agreement with the consumer.

6 I. If a provider wishes to terminate an agreement
7 with a consumer pursuant to Subsection H of this section, it
8 shall notify the consumer that it will terminate the agreement
9 unless the consumer, within thirty days after receiving the
10 notification, consents to electronic communication in the
11 manner provided in Section 101(c) of the federal act. If the
12 consumer consents, the provider may terminate the agreement
13 only as permitted by Subparagraph (g) of Paragraph (6) of
14 Subsection A of Section 19 of the Uniform Debt-Management
15 Services Act.

16 **SECTION 19. FORM AND CONTENTS OF AGREEMENT.--**

17 A. An agreement shall:

- 18 (1) be in a record;
- 19 (2) be dated and signed by the provider and
20 the individual;
- 21 (3) include the name of the individual and the
22 address where the individual resides;
- 23 (4) include the name, business address and
24 telephone number of the provider;
- 25 (5) be delivered to the individual immediately

.184442.5

1 upon formation of the agreement; and

2 (6) disclose:

3 (a) the services to be provided;

4 (b) the amount, or method of determining
5 the amount, of all fees, individually itemized, to be paid by
6 the individual;

7 (c) the schedule of payments to be made
8 by or on behalf of the individual, including the amount of each
9 payment, the date on which each payment is due and an estimate
10 of the date of the final payment;

11 (d) if a plan provides for regular
12 periodic payments to creditors: 1) each creditor of the
13 individual to which payment will be made, the amount owed to
14 each creditor and any concessions the provider reasonably
15 believes each creditor will offer; and 2) the schedule of
16 expected payments to each creditor, including the amount of
17 each payment and the date on which it will be made;

18 (e) each creditor that the provider
19 believes will not participate in the plan and to which the
20 provider will not direct payment;

21 (f) how the provider will comply with
22 its obligations pursuant to Subsection A of Section 27 of the
23 Uniform Debt-Management Services Act;

24 (g) that the provider may terminate the
25 agreement for good cause upon return of unexpended money of the

.184442.5

1 individual;

2 (h) that the individual may terminate
3 the agreement at any time, by giving written or electronic
4 notice, in which event the individual will receive all
5 unexpended money in the trust account;

6 (i) that the individual may contact the
7 administrator or the attorney general with any questions or
8 complaints regarding the provider; and

9 (j) the address, telephone number and
10 internet address or web site of the administrator.

11 B. For purposes of Paragraph (5) of Subsection A of
12 this section, delivery of an electronic record occurs when it
13 is made available in a format in which the individual may
14 retrieve, save and print it and the individual is notified that
15 it is available.

16 C. If the administrator supplies the provider with
17 any information required pursuant to Subparagraph (j) of
18 Paragraph (6) of Subsection A of this section, the provider may
19 comply with that requirement only by disclosing the information
20 supplied by the administrator.

21 D. An agreement shall provide that:

22 (1) the individual authorizes any bank in
23 which the provider or its agent has established a trust account
24 to disclose to the administrator or the attorney general any
25 financial records relating to the trust account; and

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1 (2) the provider will notify the individual
2 within five days after learning of a creditor's final decision
3 to reject or withdraw from a plan and that this notice will
4 include:

5 (a) the identity of the creditor; and
6 (b) the right of the individual to
7 modify or terminate the agreement.

8 E. An agreement shall not confer a power of
9 attorney to settle a debt, but may confer a power of attorney
10 to negotiate with creditors of the individual on behalf of the
11 individual. An agreement shall provide that the provider will
12 obtain the assent of the individual after a creditor has
13 assented to a settlement.

14 F. An agreement shall not:

15 (1) provide for application of the law of any
16 jurisdiction other than the United States and New Mexico;

17 (2) except as permitted by Section 2 of the
18 Federal Arbitration Act or the Uniform Arbitration Act, contain
19 a provision that modifies or limits otherwise available forums
20 or procedural rights, including the right to trial by jury,
21 that are generally available to the individual pursuant to law
22 other than the Uniform Debt-Management Services Act;

23 (3) contain a provision that restricts the
24 individual's rights or remedies or the provider's obligations
25 pursuant to the Uniform Debt-Management Services Act or law

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1 other than the Uniform Debt-Management Services Act;

2 (4) contain a provision that:

3 (a) limits or releases the liability of
4 any person for not performing the agreement or for violating
5 the Uniform Debt-Management Services Act; or

6 (b) indemnifies any person for liability
7 arising pursuant to the agreement or the Uniform Debt-
8 Management Services Act; or

9 (5) contain a post-agreement waiver,
10 modification or agreement prohibited from inclusion in the
11 agreement.

12 G. All rights and obligations specified in
13 Subsection D of this section and Section 20 of the Uniform
14 Debt-Management Services Act exist even if not provided in the
15 agreement. A provision in an agreement that violates
16 Subsection D, E or F of this section is void.

17 **SECTION 20. TERMINATION OF AGREEMENT BY INDIVIDUAL.--An**
18 individual may terminate an agreement at any time, without
19 penalty or obligation, by giving the provider written or
20 electronic notice, in which event:

21 A. the provider shall refund all unexpended money
22 that the provider or its agent or other person administering a
23 trust account has received from or on behalf of the individual
24 for the reduction or satisfaction of the individual's debt; and

25 B. all powers of attorney granted by the individual

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1 to the provider are revoked and ineffective.

2 SECTION 21. REQUIRED LANGUAGE.--Unless the
3 administrator, by rule, provides otherwise, the disclosures and
4 documents required by the Uniform Debt-Management Services Act
5 shall be in English. If a provider communicates with an
6 individual primarily in a language other than English, the
7 provider shall furnish a translation into the other language of
8 the disclosures and documents required by the Uniform Debt-
9 Management Services Act.

10 SECTION 22. TRUST ACCOUNT.--

11 A. All money paid to a provider by or on behalf of
12 an individual for distribution to creditors pursuant to a plan
13 is held in trust. Within two business days after receipt, the
14 provider shall deposit the money in a trust account.

15 B. A provider may request or require an individual
16 to place money in a trust account instead of paying money to
17 the provider.

18 C. The trust account shall be in a bank account
19 that is fully insured by the federal deposit insurance
20 corporation and, unless the individual owns the account, shall:

21 (1) be designated as a trust account or other
22 account designated to indicate that the money in the account is
23 not the money of the provider or its designee;

24 (2) be administered by an entity that is not:

25 (a) the provider; or

.184442.5

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1 (b) an affiliate of the provider; and

2 (3) provide that any interest accruing on the
3 funds in the account is credited to each individual from whom
4 or on whose behalf the funds were deposited.

5 D. The person administering the trust account shall
6 not give or accept any compensation from the provider in
7 exchange for referrals of business involving debt-management
8 services.

9 E. Upon termination of an agreement by an
10 individual as provided in Section 20 of the Uniform Debt-
11 Management Services Act or otherwise, the person administering
12 the trust account shall pay all money in the account, other
13 than amounts the provider may receive as provided in Section 23
14 of that act, to the individual from whom or on whose behalf the
15 funds were deposited within seven business days of the
16 individual's request.

17 F. Money in a trust account is not property of the
18 provider or the person administering the account. The money
19 belongs to each individual from whom or on whose behalf it was
20 deposited and is not available to creditors of the person
21 administering the account or creditors of the provider.

22 G. A person administering a trust account shall:

23 (1) maintain separate records of account for
24 each individual to whom the provider is furnishing debt-
25 management services;

.184442.5

1 (2) disburse money paid by or on behalf of the
2 individual to creditors of the individual as disclosed in the
3 agreement, except that:

4 (a) the provider or the person
5 administering the account may delay payment to the extent that
6 a payment by the individual is not final; and

7 (b) if a plan provides for regular
8 periodic payments to creditors, the disbursement shall comply
9 with the due dates established by each creditor; and

10 (3) promptly correct any payments that are not
11 made or that are misdirected as a result of an error by the
12 provider or other person in control of the trust account and
13 reimburse the individual for any costs or fees imposed by a
14 creditor as a result of the failure to pay or misdirection.

15 H. A provider or person administering a trust
16 account shall not include in the trust account money of persons
17 other than individuals to whom the provider is furnishing
18 debt-management services.

19 I. A trust account shall at all times have a cash
20 balance equal to the sum of the balances of each individual's
21 account.

22 J. A person administering a trust account shall
23 reconcile the trust account at least once a month. The
24 reconciliation shall compare the cash balance in the trust
25 account with the sum of the balances in each individual's

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1 account. If the provider or its designee has more than one
2 trust account, each trust account shall be individually
3 reconciled.

4 K. If a provider or person administering a trust
5 account discovers, or has a reasonable suspicion of,
6 embezzlement or other unlawful appropriation of money held in
7 trust, the provider or person administering the account,
8 respectively, immediately shall notify the administrator and
9 the attorney general by a method or methods approved by the
10 administrator or the attorney general. If either the
11 administrator or the attorney general has not approved a
12 method, then the notice shall be provided in a record sent by
13 first class mail, and the record shall refer to this section of
14 the Uniform Debt-Management Services Act. Unless the
15 administrator by rule provides otherwise, within five days
16 thereafter, the provider shall give notice to the administrator
17 and the attorney general describing the remedial action taken
18 or to be taken.

19 L. If an individual terminates an agreement or it
20 becomes reasonably apparent to a provider that a plan has
21 failed, the provider shall promptly refund to the individual
22 all money paid by or on behalf of the individual that has not
23 been paid to creditors, less any fees that are payable to the
24 provider pursuant to Section 23 of the Uniform Debt-Management
25 Services Act.

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1 M. Before relocating a trust account from one bank
2 to another, a person administering the account shall inform the
3 administrator of the name, business address and telephone
4 number of the new bank. As soon as practicable, the person
5 administering the account shall inform the administrator of the
6 account number of the trust account at the new bank.

7 SECTION 23. FEES AND OTHER CHARGES.--

8 A. A provider shall not impose directly or
9 indirectly a fee or other charge on an individual or receive
10 money from or on behalf of an individual for debt-management
11 services except as permitted by this section.

12 B. A provider shall not impose charges or receive
13 payment for debt-management services until the provider and the
14 individual have signed an agreement that complies with Sections
15 19 and 28 of the Uniform Debt-Management Services Act.

16 C. If an individual assents to an agreement, a
17 provider shall not impose a fee or other charge for educational
18 or counseling services, or the like, except as otherwise
19 provided in this subsection and Subsection D of Section 28 of
20 the Uniform Debt-Management Services Act. The administrator
21 may authorize a provider to charge a fee based on the nature
22 and extent of the educational or counseling services furnished
23 by the provider.

24 D. Subject to adjustment of dollar amounts pursuant
25 to Subsection E of Section 32 of the Uniform Debt-Management

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1 Services Act, the following rules apply:

2 (1) subject to the provisions of Paragraph (2)
3 of this subsection, if an individual assents to a plan that
4 contemplates that creditors will reduce finance charges or fees
5 for late payment, default or delinquency, the provider may
6 charge a fee not exceeding fifty dollars (\$50.00) for
7 consultation, obtaining a credit report, setting up an account
8 and the like;

9 (2) a provider shall not request or receive
10 any compensation from or on behalf of an individual unless:

11 (a) the provider has secured the assent
12 of the individual and at least one creditor of the individual
13 to a change in the terms of a debt; and

14 (b) the individual has made a payment
15 toward satisfying the modified terms of the debt;

16 (3) subject to the provisions of Paragraph (1)
17 of this subsection, if an individual assents to a plan that
18 contemplates that creditors will reduce finance charges or fees
19 for late payment, default or delinquency, the provider may
20 receive compensation in the form of a monthly service fee, not
21 to exceed ten dollars (\$10.00) multiplied by the number of
22 creditors remaining in a plan at the time the fee is assessed,
23 but not more than fifty dollars (\$50.00) in any month;

24 (4) except as otherwise provided in Subsection
25 C of this section, if an agreement contemplates that creditors

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1 will settle an individual's debts for less than the principal
2 amount of the debt:

3 (a) compensation for services in
4 connection with settling a debt shall not exceed, with respect
5 to each debt, thirty percent of the excess of the principal
6 amount of the debt over the amount paid the creditor pursuant
7 to the agreement; and

8 (b) if the debt is to be settled by
9 installment payments: 1) the provider may receive this
10 compensation in installments, made simultaneously with the
11 individual's installment payments to the creditor; but 2) any
12 such installment of the compensation shall not be a greater
13 percentage of the provider's total compensation for settlement
14 of that debt than the ratio of the settlement payment to the
15 total settlement amount for that debt;

16 (5) a provider that receives fees pursuant to
17 Paragraph (4) of this subsection shall not also impose or
18 receive fees pursuant to Paragraph (1) or (3) of this
19 subsection; and

20 (6) except as otherwise provided in Subsection
21 D of Section 28 of the Uniform Debt-Management Services Act, if
22 an individual does not assent to an agreement, a provider may
23 receive for educational and counseling services it provides to
24 the individual a fee not exceeding one hundred dollars (\$100)
25 or, with the approval of the administrator, a larger fee. The

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1 administrator may approve a fee larger than one hundred dollars
2 (\$100) if the nature and extent of the educational and
3 counseling services warrant the larger fee.

4 E. If, before the expiration of ninety days after
5 the completion or termination of educational or counseling
6 services, an individual assents to an agreement, the provider
7 shall refund to the individual any fee paid pursuant to
8 Paragraph (6) of Subsection D of this section.

9 F. Subject to adjustment of the dollar amount
10 pursuant to Subsection E of Section 32 of the Uniform Debt-
11 Management Services Act, if a payment to a provider by an
12 individual pursuant to the Uniform Debt-Management Services Act
13 is dishonored, a provider may impose a reasonable charge on the
14 individual, not to exceed the lesser of twenty-five dollars
15 (\$25.00) and the amount permitted by law other than that act.

16 **SECTION 24. VOLUNTARY CONTRIBUTIONS.--**A provider shall
17 not solicit a voluntary contribution from an individual or an
18 affiliate of the individual for any service provided to the
19 individual. A provider may accept voluntary contributions from
20 an individual but, until thirty days after completion or
21 termination of a plan, the aggregate amount of money received
22 from or on behalf of the individual shall not exceed the total
23 amount the provider may charge the individual pursuant to
24 Section 23 of the Uniform Debt-Management Services Act.

25 **SECTION 25. VOIDABLE AGREEMENTS.--**

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1 A. If a provider imposes a fee or other charge or
2 receives money or other payments not authorized by Section 23
3 or 24 of the Uniform Debt-Management Services Act, the
4 individual may void the agreement and recover as provided in
5 Section 35 of that act.

6 B. If a provider is not registered as required by
7 the Uniform Debt-Management Services Act when an individual
8 assents to an agreement, the agreement is voidable by the
9 individual.

10 C. If an individual voids an agreement pursuant to
11 Subsection B of this section, the provider does not have a
12 claim against the individual for breach of contract or for
13 restitution.

14 **SECTION 26. TERMINATION OF AGREEMENTS BY PROVIDER.--**

15 A. If an individual who has entered into an
16 agreement fails for sixty days to make payments required by the
17 agreement, a provider may terminate the agreement.

18 B. If a provider terminates an agreement, the
19 provider shall immediately return or cause the return of any
20 money of the individual held in trust for the benefit or the
21 individual.

22 **SECTION 27. PERIODIC REPORTS AND RETENTION OF RECORDS.--**

23 A. A provider shall provide the accounting required
24 by Subsection B of this section:

- 25 (1) upon cancellation or termination of an

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1 agreement; and

2 (2) before cancellation or termination of any
3 agreement:

4 (a) at least once each month; and
5 (b) within five business days after a
6 request by an individual, but the provider need not comply with
7 more than one request in any calendar month.

8 B. A provider, in a record, shall provide each
9 individual for whom it has established a plan an accounting of
10 the following information:

11 (1) the amount of money received from the
12 individual since the last report;

13 (2) the amounts and dates of disbursement made
14 on the individual's behalf, or by the individual upon the
15 direction of the provider, since the last report to each
16 creditor listed in the plan;

17 (3) the amounts deducted from the amount
18 received from the individual;

19 (4) the amount held in reserve, which amount
20 shall be held in a trust account pursuant to Section 22 of the
21 Uniform Debt-Management Services Act; and

22 (5) if, since the last report, a creditor has
23 agreed to accept as payment in full an amount less than the
24 principal amount of the debt owed by the individual:

25 (a) the total amount and terms of the

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1 settlement;

2 (b) the amount of the debt when the
3 individual assented to the plan;

4 (c) the amount of the debt when the
5 creditor agreed to the settlement; and

6 (d) the calculation of a settlement fee.

7 C. A provider shall maintain records for each
8 individual for whom it provides debt-management services for
9 five years after the final payment made by the individual and
10 shall produce a copy of them to the individual within a
11 reasonable time after a request for them. The provider may use
12 electronic or other means of storage of the records.

13 SECTION 28. PROHIBITED ACTS AND PRACTICES.--

14 A. A provider shall not, directly or indirectly:

15 (1) misappropriate or misapply money held in
16 trust or received from or on behalf of an individual;

17 (2) settle a debt on behalf of an individual
18 unless the individual assents to the settlement after the
19 creditor has assented;

20 (3) take a power of attorney that authorizes
21 it to settle a debt;

22 (4) exercise or attempt to exercise a power of
23 attorney after an individual has terminated an agreement;

24 (5) initiate a transfer from an individual's
25 account at a bank or with another person unless the transfer

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1 is:

2 (a) a return of money to the individual;

3 or

4 (b) before termination of an agreement,
5 properly authorized by the agreement and the Uniform Debt-

6 Management Services Act, and in compliance with any other law
7 governing the payment, including the law governing electronic

8 fund transfers, and for: 1) payment to one or more creditors
9 pursuant to an agreement; or 2) payment of a fee;

10 (6) offer a gift or bonus, premium, reward or
11 other compensation to an individual for executing an agreement;

12 (7) offer, pay or give a gift or bonus,
13 premium, reward or other compensation to a lead generator or
14 other person for referring a prospective customer, if the
15 person making the referral:

16 (a) has a financial interest in the
17 outcome of debt-management services provided to the customer,
18 unless neither the provider nor the person making the referral
19 communicates to the prospective customer the identity of the
20 source of the referral; or

21 (b) compensates its employees on the
22 basis of a formula that incorporates the number of individuals
23 the employee refers to the provider;

24 (8) receive a bonus, commission or other
25 benefit for referring an individual to a person;

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1 (9) structure a plan in a manner that would
2 result in a negative amortization of any of an individual's
3 debts, unless a creditor that is owed a negatively amortizing
4 debt agrees to refund or waive the finance charge upon payment
5 of the principal amount of the debt;

6 (10) compensate its employees on the basis of
7 a formula that incorporates the number of individuals the
8 employee induces to enter into agreements;

9 (11) settle a debt or lead an individual to
10 believe that a payment to a creditor is in settlement of a debt
11 to the creditor unless, at the time of settlement, the
12 individual receives a written certification by the creditor
13 that the payment is in full settlement of the debt or is part
14 of a payment plan, the terms of which are included in the
15 certification, which upon completion will result in full
16 settlement of the debt;

17 (12) make a representation that:

18 (a) the provider will furnish money to
19 pay bills or prevent attachments;

20 (b) payment of a certain amount will
21 permit satisfaction of a certain amount or range of
22 indebtedness; or

23 (c) participation in a plan will or may
24 prevent litigation, garnishment, attachment, repossession,
25 foreclosure, eviction or loss of employment;

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1 (13) misrepresent that it is authorized or
2 competent to furnish legal advice or perform legal services;

3 (14) represent in its agreements, disclosures
4 required by the Uniform Debt-Management Services Act,
5 advertisements or internet web site that it is:

6 (a) a not-for-profit entity, unless it
7 is organized and properly operating as a not-for-profit entity
8 pursuant to the law of the state in which it was formed; or

9 (b) a tax-exempt entity unless it has
10 received certification of tax-exempt status from the internal
11 revenue service and is properly operating as a not-for-profit
12 entity pursuant to the law of the state in which it was formed;

13 (15) take a confession of judgment or power of
14 attorney to confess judgment against an individual;

15 (16) employ an unfair, unconscionable or
16 deceptive act or practice, including the knowing omission of
17 any material information;

18 (17) require an individual participating in a
19 debt-management program to utilize additional ancillary goods
20 or services;

21 (18) at any time, encourage any individual to
22 stop or refrain from payment of any debt;

23 (19) fail to provide promised services to any
24 individual;

25 (20) enter into a contract with an individual

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1 if the contract signed by the individual contained any blank
2 spaces to be filled in later;

3 (21) include in any debt-management services
4 agreement any debt secured by a motor vehicle or real property;
5 or

6 (22) advise an individual not to communicate
7 with the individual's creditors, or to change the address on
8 bills of creditors so that the individual no longer receives
9 information about the individual's debts directly from the
10 creditor.

11 B. If a provider furnishes debt-management services
12 to an individual, the provider shall not, directly or
13 indirectly:

14 (1) purchase a debt or obligation of the
15 individual;

16 (2) receive from or on behalf of the
17 individual:

18 (a) a promissory note or other
19 negotiable instrument other than a check or a demand draft; or

20 (b) a post-dated check or demand draft;

21 (3) lend money or provide credit to the
22 individual, except as a deferral of a settlement fee at no
23 additional expense to the individual;

24 (4) obtain a mortgage or other security
25 interest from any person in connection with the services

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1 provided to the individual;

2 (5) except as permitted by federal law,
3 disclose the identity or identifying information of the
4 individual or the identity of the individual's creditors,
5 except to:

6 (a) the administrator, upon proper
7 demand;

8 (b) a creditor of the individual, to the
9 extent necessary to secure the cooperation of the creditor in a
10 plan; or

11 (c) the extent necessary to administer
12 the plan;

13 (6) except as otherwise provided in Paragraph
14 (4) of Subsection D of Section 23 of the Uniform
15 Debt-Management Services Act, provide the individual less than
16 the full benefit of a compromise of a debt arranged by the
17 provider;

18 (7) charge the individual for or provide
19 credit or other insurance, coupons for goods or services,
20 membership in a club, access to computers or the internet or
21 any other matter not directly related to debt-management
22 services or educational services concerning personal finance,
23 except to the extent such services are expressly authorized by
24 the administrator; or

25 (8) furnish legal advice or perform legal

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1 services, unless the person furnishing that advice to or
2 performing those services for the individual is licensed to
3 practice law.

4 C. The Uniform Debt-Management Services Act does
5 not authorize any person to engage in the practice of law.

6 D. A provider shall not receive a gift or bonus,
7 premium, reward or other compensation, directly or indirectly,
8 for advising, arranging or assisting an individual in
9 connection with obtaining an extension of credit or other
10 service from a lender or service provider, except for
11 educational or counseling services required in connection with
12 a government-sponsored program.

13 E. Unless a person supplies goods, services or
14 facilities generally and supplies them to the provider at a
15 cost no greater than the cost the person generally charges to
16 others, a provider shall not purchase goods, services or
17 facilities from the person if an employee of the provider or a
18 person that the provider should reasonably know is an affiliate
19 of the provider:

20 (1) owns more than ten percent of the person;

21 or

22 (2) is an employee or affiliate of the person.

23 **SECTION 29. NOTICE OF LITIGATION.**--No later than thirty
24 days after a provider or an affiliate of the provider has been
25 served with notice of a civil action for violation of the

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1 Uniform Debt-Management Services Act or the Unfair Practices
2 Act, or of fraud or misrepresentation by or on behalf of an
3 individual who resides in New Mexico at either the time of an
4 agreement or the time the notice is served, the provider shall
5 notify the administrator and the attorney general in a record
6 of the lawsuit.

7 SECTION 30. ADVERTISING.--

8 A. If the agreements of a provider contemplate that
9 creditors will reduce finance charges or fees for late payment,
10 default or delinquency and the provider advertises
11 debt-management services, it shall disclose, in an easily
12 comprehensible manner, that using a debt-management plan may
13 make it harder for the individual to obtain credit.

14 B. If the agreements of a provider whose agreements
15 contemplate that creditors will settle for less than the full
16 principal amount of debt and the provider advertises
17 debt-management services, it shall disclose, in an easily
18 comprehensible manner, the information specified in Paragraphs
19 (3) and (4) of Subsection D of Section 17 of the Uniform
20 Debt-Management Services Act.

21 C. Advertising concerning debt-management services
22 shall not contain a false, misleading or deceptive statement or
23 omit any fact necessary to make the statements made, in light
24 of circumstances under which they are made, not false,
25 misleading or deceptive.

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1 **SECTION 31. LIABILITY OF PROVIDER FOR THE CONDUCT OF**
2 **OTHER PERSONS--UNLAWFUL CONDUCT BY OTHER PERSONS.--**

3 A. If a provider delegates any of its duties or
4 obligations pursuant to an agreement or the Uniform
5 Debt-Management Services Act to another person, including an
6 independent contractor, the provider is liable for conduct of
7 the person that, if done by the provider, would violate the
8 agreement or the Uniform Debt-Management Services Act.

9 B. A lead generator or other person that provides
10 services to or for a provider shall not engage in an unfair,
11 unconscionable or deceptive act or practice, including the
12 knowing omission of any material information, in its
13 interactions with an individual whom it has reason to believe
14 is or may become a customer of the provider.

15 **SECTION 32. POWERS OF ADMINISTRATOR AND ATTORNEY**
16 **GENERAL.--**

17 A. The administrator may act on the administrator's
18 own initiative or in response to complaints and may receive
19 complaints, take action to obtain voluntary compliance with the
20 Uniform Debt-Management Services Act, refer cases to the office
21 of the attorney general and seek or provide remedies as
22 provided in the Uniform Debt-Management Services Act.

23 B. The administrator or the attorney general may
24 investigate and examine, in New Mexico or elsewhere, by
25 subpoena or otherwise, the activities, books, accounts and

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1 records of a person that provides or offers to provide
2 debt-management services, a person to which a provider has
3 delegated its obligations pursuant to an agreement or the
4 Uniform Debt-Management Services Act or a person that
5 administers a trust account for a provider, to determine
6 compliance with that act. Information that identifies
7 individuals who have agreements with the provider shall not be
8 disclosed to the public. In connection with the investigation,
9 the administrator or the attorney general may:

10 (1) charge the person the reasonable expenses
11 necessarily incurred to conduct the examination;

12 (2) require or permit a person to file a
13 statement under oath as to all the facts and circumstances of a
14 matter to be investigated; and

15 (3) seek a court order authorizing seizure,
16 from a bank at which the person maintains a trust account, any
17 or all money in the trust account, and the books, records,
18 accounts and other property of the provider that is in the
19 control of the bank.

20 C. The administrator may adopt rules to implement
21 the provisions of the Uniform Debt-Management Services Act.

22 D. The administrator or the attorney general may
23 enter into cooperative arrangements with any other federal or
24 state agency having authority over providers and may exchange
25 with any of those agencies information about a provider,

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1 including information obtained during an examination of the
2 provider.

3 E. The administrator, by rule, shall adopt dollar
4 amounts instead of those specified in Sections 2, 5, 9, 13, 23,
5 33 and 35 of the Uniform Debt-Management Services Act to
6 reflect inflation, as measured by the United States bureau of
7 labor statistics consumer price index for all urban consumers
8 or, if that index is not available, another index adopted by
9 rule by the administrator. The administrator shall adopt a
10 base year and adjust the dollar amounts, effective on January 1
11 of each year beginning in 2016, if the change in the index from
12 the base year, as of December 31 of the preceding year, is at
13 least ten percent. The dollar amount shall be rounded to the
14 nearest one hundred dollars (\$100), except that the amounts in
15 Section 23 of the Uniform Debt-Management Services Act shall be
16 rounded to the nearest dollar.

17 F. The administrator shall notify registered
18 providers of any change in dollar amounts made pursuant to
19 Subsection E of this section and make that information
20 available to the public.

21 **SECTION 33. ADMINISTRATIVE REMEDIES.--**

22 A. The administrator or attorney general may
23 enforce the Uniform Debt-Management Services Act and rules
24 adopted pursuant to that act by taking one or more of the
25 following actions:

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1 (1) ordering a provider, a lead generator, a
2 person administering a trust account or a director, employee or
3 other agent of a provider to cease and desist from any
4 violation;

5 (2) ordering a provider, a lead generator, a
6 person administering a trust account or a person that has
7 caused a violation to correct the violation, including making
8 restitution of money or property to a person aggrieved by a
9 violation;

10 (3) subject to adjustment of the dollar amount
11 pursuant to Subsection E of Section 32 of the Uniform Debt-
12 Management Services Act, imposing on a provider or other person
13 that has violated or caused a violation a civil penalty not
14 exceeding ten thousand dollars (\$10,000) for each violation;

15 (4) prosecuting a civil action to:

16 (a) enforce an order; or

17 (b) obtain restitution or an injunction
18 or other equitable relief, or both; or

19 (5) intervening in an action brought pursuant
20 to Section 35 of the Uniform Debt-Management Services Act.

21 B. Subject to adjustment of the dollar amount
22 pursuant to Subsection E of Section 32 of the Uniform Debt-
23 Management Services Act, if a person violates or knowingly
24 authorizes, directs or aids in the violation of a final order
25 issued pursuant to Paragraph (1) or (2) of Subsection A of this

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1 section, the administrator or the attorney general may impose a
2 civil penalty not exceeding twenty thousand dollars (\$20,000)
3 for each violation.

4 C. The administrator or the attorney general may
5 maintain an action to enforce the Uniform Debt-Management
6 Services Act in any county, state or country.

7 D. The administrator or the attorney general may
8 recover the reasonable expenses of enforcing the Uniform
9 Debt-Management Services Act pursuant to Subsections A through
10 C of this section, including attorney and expert witness fees
11 based on the hours reasonably expended and the hourly rates for
12 attorneys and expert witnesses of comparable experience in the
13 community.

14 E. In determining the amount of a civil penalty to
15 impose pursuant to Subsection A or B of this section, the
16 administrator or the attorney general shall consider the
17 seriousness of the violation, the good faith of the violator,
18 any previous violations by the violator, the deleterious effect
19 of the violation on the public, the net worth of the violator
20 and any other factor the administrator or the attorney general
21 considers relevant to the determination of the civil penalty.

22 SECTION 34. SUSPENSION, REVOCATION OR NONRENEWAL OF
23 REGISTRATION.--

24 A. As used in this section, "insolvent" means:
25 (1) having generally ceased to pay debts in

1 the ordinary course of business other than as a result of a
2 good-faith dispute;

3 (2) being unable to pay debts as they become
4 due; or

5 (3) being insolvent within the meaning of the
6 federal bankruptcy law, 11 U.S.C. Section 101, et seq., as
7 amended.

8 B. The administrator may suspend, revoke or deny
9 renewal of a provider's registration if:

10 (1) a fact or condition exists that, if it had
11 existed when the registrant applied for registration as a
12 provider, would have been a reason for denying registration;

13 (2) the provider has committed a material
14 violation of the Uniform Debt-Management Services Act or a rule
15 or order of the administrator pursuant to that act;

16 (3) the provider is insolvent;

17 (4) the provider, an employee or affiliate of
18 the provider, a lead generator, a person administering a trust
19 account or a person to which the provider has delegated its
20 obligations pursuant to an agreement or pursuant to the Uniform
21 Debt-Management Services Act has refused to permit the
22 administrator to make an examination authorized by that act,
23 failed to comply with Paragraph (2) of Subsection B of Section
24 32 of that act within fifteen days after request or made a
25 material misrepresentation or omission in complying with that

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1 paragraph;

2 (5) the provider has not responded within a
3 reasonable time and in an appropriate manner to communications
4 from the administrator; or

5 (6) the provider or any of its officers,
6 directors, principal owners or predecessor organizations has
7 been convicted of a crime, made a plea of nolo contendere or
8 incurred a judgment, administrative agency action or license
9 discipline in any jurisdiction that involves dishonesty, fraud,
10 financial misconduct or deceit or the violation or alleged
11 violation of consumer protection laws or that is substantially
12 related to the qualifications, functions or duties of the
13 licensed activity.

14 C. If a provider or the person administering a
15 trust account for the provider does not comply with Subsection
16 A, G, I, J or K of Section 22 of the Uniform Debt-Management
17 Services Act or if the administrator otherwise finds that the
18 public health or safety or general welfare requires emergency
19 action, the administrator may order a summary suspension of the
20 provider's registration, effective on the date specified in the
21 order.

22 D. If the administrator suspends, revokes or denies
23 renewal of the registration of a provider, the administrator or
24 the attorney general may seek a court order authorizing seizure
25 of any or all of the money in a trust account and the books,

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1 records, accounts and other property of the provider that are
2 located in New Mexico or elsewhere.

3 E. If the administrator suspends or revokes a
4 provider's registration, the provider may appeal and request a
5 hearing.

6 SECTION 35. PRIVATE ENFORCEMENT.--

7 A. If an individual voids an agreement pursuant to
8 Subsection B of Section 25 of the Uniform Debt-Management
9 Services Act, the individual may recover in a civil action all
10 money paid or deposited by or on behalf of the individual
11 pursuant to the agreement, except amounts paid to creditors, in
12 addition to the recovery pursuant to Paragraphs (3) and (4) of
13 Subsection C of this section.

14 B. If an individual voids an agreement pursuant to
15 Subsection A of Section 25 of the Uniform Debt-Management
16 Services Act, the individual may recover in a civil action
17 three times the total amount of the fees, charges, money and
18 payments made by the individual to the provider, in addition to
19 the recovery pursuant to Paragraph (4) of Subsection C of this
20 section.

21 C. Subject to Subsection D of this section, an
22 individual with respect to whom a provider or other person
23 violates the Uniform Debt-Management Services Act may recover
24 in a civil action from the provider and any person that caused
25 the violation:

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1 (1) compensatory damages for injury, including
2 noneconomic injury, caused by the violation;

3 (2) except as otherwise provided in Subsection
4 D of this section and subject to adjustment of the dollar
5 amount pursuant to Subsection E of Section 32 of the Uniform
6 Debt-Management Services Act, with respect to a violation of
7 Section 17, 19, 20, 21, 22, 23, 24, 27 or Subsection A, B or D
8 of Section 28 of that act, the greater of the amount
9 recoverable pursuant to Paragraph (1) of this subsection or
10 five thousand dollars (\$5,000);

11 (3) punitive damages; and

12 (4) reasonable attorney and expert witness
13 fees and other litigation expenses.

14 D. In a class action, except for a violation of
15 Paragraph (5) of Subsection A of Section 28 of the Uniform
16 Debt-Management Services Act, the minimum damages provided in
17 Paragraph (2) of Subsection C of this section do not apply.

18 E. In addition to the remedy available pursuant to
19 Subsection C of this section, if a provider violates an
20 individual's rights pursuant to Section 20 of the Uniform
21 Debt-Management Services Act, the individual may recover in a
22 civil action all money paid or deposited by or on behalf of the
23 individual pursuant to the agreement, except for amounts paid
24 to creditors.

25 F. A provider is not liable pursuant to this

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1 section for a violation of the Uniform Debt-Management Services
2 Act if the provider proves that the violation was not
3 intentional and resulted from a good-faith error
4 notwithstanding the maintenance of procedures reasonably
5 adapted to avoid the error. An error of legal judgment with
6 respect to a provider's obligations pursuant to the Uniform
7 Debt-Management Services Act is not a good-faith error. If, in
8 connection with a violation, the provider has received more
9 money than authorized by an agreement or the Uniform Debt-
10 Management Services Act, the defense provided by this
11 subsection is not available unless the provider refunds the
12 excess within two business days of learning of the violation.

13 G. The administrator or the attorney general may
14 assist an individual in enforcing a judgment against the surety
15 bond or other security provided pursuant to Section 13 or 14 of
16 the Uniform Debt-Management Services Act.

17 **SECTION 36. VIOLATION OF UNFAIR PRACTICES ACT.**--If an
18 act or practice of a provider or other person violates both the
19 Uniform Debt-Management Services Act and the Unfair Practices
20 Act, an individual shall not recover under both for the same
21 act or practice. This section shall not prevent the
22 administrator or the attorney general from seeking injunctive
23 relief pursuant to the Uniform Debt-Management Services Act or
24 the Unfair Practices Act for the same act or practice, but
25 neither shall recover damages pursuant to both acts for the

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1 same act or practice.

2 SECTION 37. STATUTE OF LIMITATIONS.--

3 A. An action or proceeding brought pursuant to
4 Subsection A, B or C of Section 33 of the Uniform Debt-
5 Management Services Act shall be commenced within four years
6 after the conduct that is the basis of the complaint of the
7 administrator or the attorney general.

8 B. An action brought pursuant to Section 35 of the
9 Uniform Debt-Management Services Act shall be commenced within
10 four years after the latest of:

11 (1) the individual's last transmission of
12 money to a provider;

13 (2) the individual's last transmission of
14 money to a creditor at the direction of the provider;

15 (3) the provider's last disbursement to a
16 creditor of the individual;

17 (4) the provider's last accounting to the
18 individual pursuant to Subsection A of Section 27 of the
19 Uniform Debt-Management Services Act;

20 (5) the date on which the individual
21 discovered or reasonably should have discovered the facts
22 giving rise to the individual's claim; or

23 (6) the termination of the latest actions or
24 proceedings by the administrator or the attorney general with
25 respect to a violation of the Uniform Debt-Management Services

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1 Act.

2 C. The period prescribed in Paragraph (5) of
3 Subsection B of this section is tolled during any period during
4 which the provider or, if different, the defendant has
5 materially and willfully misrepresented information required by
6 the Uniform Debt-Management Services Act to be disclosed to the
7 individual, if the information so misrepresented is material to
8 the establishment of the liability of the defendant pursuant to
9 that act.

10 SECTION 38. UNIFORMITY OF APPLICATION AND
11 CONSTRUCTION.--In applying and construing the Uniform Debt-
12 Management Services Act, consideration shall be given to the
13 need to promote uniformity of the law with respect to its
14 subject matter among states that enact it.

15 SECTION 39. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
16 AND NATIONAL COMMERCE ACT.--The Uniform Debt-Management
17 Services Act modifies, limits and supersedes the federal
18 Electronic Signatures in Global and National Commerce Act (15
19 U.S.C. Section 7001, et seq.) but does not modify, limit or
20 supersede Section 101(c) of that act (15 U.S.C. Section
21 7001(c)) or authorize electronic delivery of any of the notices
22 described in Section 103(b) of that act (15 U.S.C. Section
23 7003(b)).

24 SECTION 40. TRANSITIONAL PROVISION--APPLICATION TO
25 EXISTING TRANSACTIONS.--Transactions entered into before the

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1 Uniform Debt-Management Services Act takes effect and the
2 rights, duties and interests resulting from them may be
3 completed, terminated or enforced as required or permitted by a
4 law amended, repealed or modified by the Uniform Debt-
5 Management Services Act as though the amendment, repeal or
6 modification had not occurred.

7 SECTION 41. REPEAL.--Sections 56-2-1 through 56-2-4 NMSA
8 1978 (being Laws 1965, Chapter 80, Sections 1 through 4) are
9 repealed.

10 SECTION 42. SEVERABILITY.--If any part or application of
11 this act is held invalid, the remainder or its application to
12 other situations or persons shall not be affected.

13 SECTION 43. EFFECTIVE DATE.--

14 A. The effective date of the provisions of Sections
15 1 through 3 and 15 through 42 of this act is January 1, 2012.

16 B. The effective date of the provisions of Sections
17 4 through 14 of this act is January 1, 2015.